

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
WINC, INC., *et al.*, Case No. 22-11238 (LSS)
(Jointly Administered
Re: Docket Nos. 223 & 263
Courtroom No. 2
824 Market Street
Debtors. Wilmington, Delaware 19801
Thursday, March 2, 2023
3:00 p.m.

TRANSCRIPT OF STATUS CONFERENCE HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: Allison Mielke, Esquire
YOUNG CONAWAY STARGATT & TAYLOR LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801

(APPEARANCES CONTINUED)

Audio Operator: LaCrisha Harden

Transcription Company: Reliable
The Nemours Building
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302) 654-8080
Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

APPEARANCES (CONTINUED) :

For the U.S. Trustee: Jane Leamy, Esquire
OFFICE OF THE UNITED STATES TRUSTEE
J. Caleb Boggs Building
844 King Street, Suite 2207
Lockbox 35
Wilmington, Delaware 19801

For the Committee: Justin Kesselman, Esquire
ARENTFOX SCHIFF LLP
800 Boylston Street
32nd Floor
Boston, Massachusetts 02199

1 (Proceedings commenced at 3:01 p.m.)

2 THE COURT: Good afternoon. This is Judge
3 Silverstein. We're back again in Winc, Inc., 22-11238.

4 Thank you to everyone for getting together quickly
5 to discuss the bar date order again.

6 I have reviewed the revised form of order and
7 relative to the holders of gift cards and the monthly
8 subscribers to the debtors' wine program. And I think what
9 the changes did was highlight for me that, in fact, there is
10 not a real way to fix this in a bar date order. And what I
11 think this is showing me is that we're getting into claims
12 administration in the bar date order, and that is not where
13 we should be doing it.

14 I am not comfortable with a notice relative to a
15 bar date that says that claims filed by the debtors'
16 customers for unredeemed gift cards and subscription credits
17 are no longer obligations of the debtors' estate because I
18 think they are. I think we are getting into claims
19 administration.

20 I asked one of my colleagues about this, without
21 giving him my view, and he had the same reaction that these
22 are claims. If they -- that these obligations were
23 transferred. And I can't actually tell you how because I did
24 not go back and look at the contract, but the purchaser
25 agreed, in some fashion, to pay or honor gift cards and these

1 obligations; the monthly subscription obligations. That
2 didn't novate whatever the arrangement was between the
3 debtors and those holders of claims.

4 So, I think what this does is this notice is
5 establishing a legal conclusion to what happens if the holder
6 of a gift card or a credit under a monthly subscription files
7 a proof of claim. And that is why I say its anticipating
8 claims administration through the bar date. And I am just
9 not comfortable with that.

10 Ms. Mielke.

11 MS. MIELKE: Thank you. I appreciate your
12 concerns, Your Honor. I think there is still a way to
13 accomplish what we are trying to do here with language that
14 probably better satisfies your concerns.

15 As far as I am aware, and I am sure that you will
16 correct me if I'm wrong, but let's assume that the DTC
17 customers are considered creditors of the estate, they are
18 obligated or entitled to notice of those bar dates which this
19 notice does. This notice does not provide or the package
20 that we are proposing to send to this body of creditors does
21 not provide a proof of claim form.

22 We would suggest that this notice go out
23 electronically not only because that is the mode of
24 communication that these particular creditors are used to
25 communicating with the debtors, but also because it would cut

1 down on the cost of service substantially. I think the
2 estimate cost of a service of a hard copy bard date to only
3 this body of creditors is around \$100,000. That is
4 conservative. I think it's a little bit more.

5 From what I am hearing, I think what we could do
6 is tweak the notice to simply say, and I am not sure if this
7 part you would object to or not, but to simply say that the
8 debtors' assets were sold as part of the sale, you know, note
9 the docket number of the sale order, identify that pursuant
10 to that order the purchaser has assumed those obligations.
11 I don't know if you take offense to that or not.

12 Then tell customers that those obligations -- the
13 customer credits will be in the ordinary course of business,
14 and that those particular creditors need not do anything with
15 respect to those subscription credits. We're going to have
16 those honored in the ordinary course of business, but if they
17 want to file a proof of claim in the cases here is the bar
18 date.

19 THE COURT: What is the resistance to just sending
20 out the bar date notice?

21 MS. MIELKE: Well because I think that this is a
22 group of very unsophisticated parties and I think that a
23 notice that goes out to them that says here is a bar date
24 package without any information about what has happened to
25 these liabilities might be confusing and might actually

1 result in a substantial number of proofs of claim filed where
2 if people understood that their claims were going to be
3 honored in the ordinary course of business or that, you know,
4 that was what was contemplated under the sale documents they
5 might not feel that level of discomfort.

6 THE COURT: I don't -- I think that happens in
7 every case. I think we often have a large unsophisticated
8 group of creditors who gets a bar date notice, they don't
9 know whether they should file a claim or not, some people
10 file a claim that just says I got this so I think I might be
11 owed money, I get those kinds of things all the time.

12 I don't tell people in a bar date motion whether
13 or not they have a claim or whether or not they should file
14 one. What I think -- and then once claims are filed the
15 debtor deals with them in claims administration. And if you
16 want to perhaps add something to the proof of claim form that
17 has a place to check off if this is for a subscription or
18 this is for a gift card so that you know that is -- the
19 debtor knows that is what it's for I am not opposed to that.

20 Now that may have more people file a claim because
21 they see that on the proof of claim form, but you are still -
22 - the debtor is still trying to influence whether somebody
23 has a claim or doesn't have a claim. I think they have
24 claims. Whether or not those claims have or will be
25 satisfied in some other fashion so that that person is no

1 longer entitled to be paid from the estate is a different
2 question. And that is a claims administration question.
3 That is not a bar date notice question.

4 Bar date notices go out to anybody who possibly
5 has a claim, anybody. That is what the debtor should do,
6 right. You want to get all those claims in so that they're
7 subject to a bar date. And this just doesn't look right.

8 If you want to send something else that comes from
9 the debtor that doesn't come from the Court and is not part
10 of the official form maybe you can do that, I don't know. I
11 have not seen anything like this done before and neither has
12 the colleague that I checked with who has had retail cases
13 that implicate gift cards. So --

14 MS. MIELKE: I think mostly because where there
15 are gift cards there is (inaudible), right, to holders of
16 gift cards because there is no way to track who the holder of
17 the gift card is.

18 THE COURT: Fair enough. But then there is a,
19 perhaps, publication notice.

20 MS. MIELKE: And there is one here too as well.

21 THE COURT: And so, holders of gift cards can
22 decide what they want to do.

23 MS. MIELKE: Right. I think that is still the
24 case here with the publication notice. I don't want to --
25 its pretty clear where Your Honor falls on this, so I don't

1 want to debate the issue, you know, if you determine that
2 this is the path forward.

3 I will try one more time to say that I still think
4 a shortened more abbreviated notice to this body of creditors
5 by email, even with just the same notice, but removing all of
6 the reference to subscription, would still cut down on
7 administrative costs and there is a benefit to doing that.

8 THE COURT: I don't have a problem with the email
9 notification to the monthly subscribers because I think I
10 approved that on the first day. So, I do not have a problem
11 with notice going in that fashion. I just think they should
12 be given a proof of claim form. They should be given the bar
13 date notice and they can make a decision about whether or not
14 they want to file a proof of claim.

15 For those that do the debtor can object to those
16 claims at an appropriate time in the process and that
17 objection might include some diligence with the purchaser
18 about whether the monthly subscribers are being addressed in
19 the ordinary course of business, and whether or not the gift
20 cards are being honored in the ordinary course of business so
21 that the debtor can actually, in fact, file that objection
22 and have a basis to do so.

23 MS. MIELKE: I hear you, Your Honor, and I
24 understand the concerns. Obviously, what is motivated by
25 this is not that we don't want people to file proofs of claim

1 necessarily. We just don't want unsubstantiated proofs of
2 claim to be filed. We want these potential creditors to be
3 informed of the full set of circumstances including that
4 which is a fact, it's on the record, that this is a term in
5 the sale order and the APA.

6 THE COURT: It's a term in the sale order and I
7 have no idea whether the purchaser is honoring it or not. If
8 the purchaser does not honor it these parties have claims
9 against this company. Whether or not they honor it they have
10 claims against the debtor, but there would be a defense to
11 the claim, an objection to the claim if, in fact, they had a
12 gift card for \$50 and the purchaser honored it in the full
13 amount of \$50, they're not entitled to get another \$50.

14 So, that is the objection. But unless that
15 happens they have a claim against this estate. And I don't
16 know that, in fact, they're being honored in the ordinary
17 course and I suspect neither does the debtor. But I also
18 suspect, because of the contractual obligation that the
19 purchaser has to the debtor, to honor those obligations that
20 its honoring them, but I don't know that.

21 This is claims. This is get claims in the estate.
22 This is not claims administration. This is not objecting to
23 claims that have been filed. I just think that is what is
24 being anticipated here and I am not willing to go there. It
25 may mean that the debtor gets a host of claims that it will

1 have to track down and object to. We get those omnibus
2 objections all the time.

3 MS. MIELKE: Right. What I'm hearing and I think
4 you might have said this, I just want to clarify to make sure
5 I'm not misunderstanding, if the debtor and the purchaser,
6 you know, agree to a form of communication that comes from
7 the purchaser or potentially even from the debtors, but I
8 guess that is TBD, that says that obligations, that
9 subscription credits are being honored in the ordinary course
10 of business by the purchaser. You are not opposed to that
11 and that is not something we would be seeking the Court to
12 approve if it came from the purchaser or something similar.

13 THE COURT: If it's not something I am being asked
14 to approve then I think the debtor should think about whether
15 its appropriate to send such a communication or whether the
16 purchaser thinks its appropriate to send such a
17 communication, and whether or not such a communication was
18 already sent in connection with the sale motion and the
19 purchaser taking over the obligations. I don't know whether
20 they already did that or not. Maybe they would have to try
21 to build good will. I don't know what they have done.

22 It's not something that should come out in
23 connection in the bar date notice, and its not something that
24 should be court sanctioned.

25 MS. MIELKE: Understood.

1 THE COURT: I haven't thought about whether the
2 debtor should, by itself, do that. I think the debtor should
3 really give some thought to that. Again, it's just this
4 resistance to just send in a bar date notice to people. They
5 will file a claim, or they won't file a claim, I don't know.

6 MS. MIELKE: Right. I don't want to beat a dead
7 horse here, but the problem here is scope of claims and that
8 is a practical concern that we are trying to solve for. But
9 I understand what the issue is and I appreciate that. I mean
10 its just a big group of people and we're trying to make sure
11 that the notice is, you know, best dealing with the
12 administrative practical problems that arise from this.

13 THE COURT: I really actually don't view that part
14 of it as very different then any other case with a large
15 creditor body

16 MS. MIELKE: I understand.

17 THE COURT: Ms. Leamy.

18 MS. LEAMY: Your Honor, thank you. Jane Leamy for
19 the U.S. Trustee.

20 I just wanted to address a separate issue that, I
21 think, parties might not be focusing on because of the extra
22 hearing we had, is the bar date is listed as March 30th on
23 the notice. I think the intent was to -- I know, you know,
24 20 days might be okay, but I think the intent was to give, at
25 least, 30 days. So, I don't know if that needs to be pushed

1 out a little bit because this hearing has been pushed out
2 from the original date it was contemplated.

3 THE COURT: Thank you. I think that is a fair
4 point. And we should move the bar date accordingly.

5 MS. MIELKE: There's no objection to that, Your
6 Honor. Whatever order that we submit to the Court under COC
7 we will propose that the date be 30 days from entry of the
8 order.

9 THE COURT: Thank you.

10 Any other questions or comments?

11 MR. KESSELMAN: Your Honor, Justin Kesselman from
12 ArentFox for the Committee.

13 Just wanted to put on the record that the
14 committee will consult with the debtors about this potential
15 notice and the parameters around it. It seems like it could
16 be a good solution to solve for the cost issue.

17 With respect to, you know, claims adjudication
18 down the road it doesn't have to be decided today, but we
19 would hope we would be able to file omnibus objections to
20 these types of claims and be able to address notice in a
21 similar way when we do that.

22 THE COURT: We will deal with that when we get to
23 claims administration. And if people file claims they will
24 tell you in there probably how you are supposed to

25

1 communicate with them, but we will deal with that when it
2 arises.

3 MR. KESSELMAN: Understood. Thank you, Your Honor.

4 THE COURT: Thank you.

5 So, I will look for a revised form of order as we
6 have discussed on the record. I appreciate everyone's
7 patience as we work through this. This is the first time I
8 have dealt with a bar date order that has this issue that
9 arises. But I have given it, as you can see, a fair amount
10 of thought and I have discussed it with one of my colleagues
11 and this is where I come out. So, it's a process. It's a
12 process issue. And it's a due process issue.

13 So, I will look for the form of order and when I
14 get it, I will sign it, and you can get the process underway.

15 MS. MIELKE: Thank you, Your Honor.

16 THE COURT: Mr. Hurford, did you have something to
17 add?

18 MR. HURFORD: I'm sorry, I was just turning on my
19 video to say thank you. That was all.

20 THE COURT: Okay. Very good. Thank you. We are
21 adjourned.

22 (Proceedings concluded at 3:19 p.m.)
23
24
25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Mary Zajackowski

March 2, 2023

Mary Zajackowski, CET-531

Certified Court Transcriptionist

For Reliable